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8 United States of America

9
10 IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
11

12 _____)
UNITED STATES OF AMERICA,)
13)
Plaintiff,)
14)
v.) Civil Action No. _____
15)
DYNAMIC WHEELS & TIRES, INC.,)
16 a corporation, and)
GARY JERJERIAN,) CONSENT DECREE AND
17 individually,) ORDER FOR INJUNCTIVE AND
18) OTHER RELIEF
Defendants.)
19 _____)

20 WHEREAS plaintiff, the United States of America, has commenced
21 this action by filing the Complaint herein; defendants have waived
22 service of the Summons and Complaint; the parties have been
23 represented by the attorneys whose names appear hereafter; and the
24 parties have agreed to settlement of this action upon the following
25 terms and conditions, without adjudication of any issue of fact or
26 law, without admitting liability for any of the matters alleged in
27 the Complaint;
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1 5. Plaintiff's agreement to this consent decree is expressly
2 premised upon the truthfulness, accuracy, and completeness of the
3 financial condition of defendants, as represented in the financial
4 statements referenced above, which contain material information upon
5 which the plaintiff relied in negotiating and agreeing to suspend the
6 civil penalty stated in the consent decree. If, upon motion by the
7 plaintiff, this Court finds that either defendant made any material
8 misrepresentation in or omission from either of the financial
9 statements, the entire amount of the \$200,000.00 suspended judgment
10 entered against defendants will be immediately due and payable. In
11 connection with any such motion, the only issue shall be whether the
12 financial information either defendant provided in either of the
13 financial statements was fraudulent, misleading, inaccurate or
14 incomplete in any material respect. For purposes of this paragraph,
15 and any subsequent proceedings to enforce payment, including but not
16 limited to a nondischargeability complaint filed in any bankruptcy
17 proceeding, defendants waive any right to contest any of the
18 allegations of plaintiff's Complaint.

19 6. In the event of any default in payment, which default
20 continues for ten (10) days beyond the due date of payment, the
21 entire unpaid penalty, together with interest, as computed pursuant
22 to 28 U.S.C. § 1961, from the date of default to the date of payment,
23 will immediately become due and payable.

1 CONSUMER REDRESS

2 7. Defendants must, within fifteen (15) business days after
3 service of this Consent Decree, compile from their regularly kept
4 business records and from any other information made available to
5 them by Plaintiff, a list containing each buyer, from January 1,
6 2000, to the date of entry of this Consent Decree, who paid
7 defendants for merchandise that was never shipped to the buyer, his
8 or her name, last known address, and the difference between what the
9 buyer paid for the merchandise and the amount, if any, defendants
10 refunded to the buyer. Defendants must, within thirty (30) business
11 days after service of this Consent Decree, reimburse each buyer on
12 this list the difference between the amount the buyer paid and the
13 amount (if any) defendants refunded.

14 INJUNCTION

15 8. Defendants, their successors and assigns, and their
16 officers, agents, servants, employees and attorneys, and all other
17 persons in active concert or participation with them who receive
18 actual notice of this Consent Decree by personal service or
19 otherwise, are hereby enjoined from violating, directly or through
20 any corporation, subsidiary, division or other device, any provision
21 of the Rule, including but not limited to:

- 22 e. Soliciting orders for the sale of merchandise by mail,
23 telephone, facsimile or Internet unless they have a
24 reasonable basis to expect that they can ship such
25 merchandise within the time stated in the solicitation or,
26 if no time is stated clearly and conspicuously in the
27

1 solicitation, within thirty (30) days after receipt of a
2 properly completed order, as required by 16 C.F.R.

3 § 435.1(a)(1);

4 f. Failing to offer to the buyer, clearly and conspicuously
5 and without prior demand, an option either to consent to a
6 delay in shipping or to cancel the order and receive a
7 prompt refund, as required by 16 C.F.R. § 435.1(b)(1); and

8 g. Failing to deem an order canceled and to make a prompt
9 refund, as "refund" and "prompt refund" are defined in
10 Sections 435.2(e)-(f) of the Rule, to buyers who are
11 entitled to such refunds under 16 C.F.R. § 435.1(c).

12 9. In the event the Rule is hereafter amended or modified,
13 defendants' compliance with that Rule as so amended or modified will
14 not be deemed a violation of this injunction.

15 **COMPLIANCE**

16 10. Defendants Dynamic Wheels & Tires, Inc., and Gary
17 Jerjerian must, within thirty (30) days of the entry of this Consent
18 Decree, provide a copy of this Consent Decree and the Business Guide
19 to the Federal Trade Commission's Mail or Telephone Order Merchandise
20 Rule (Jan. 1995) ("Business Guide") to each of their supervisory or
21 managerial agents, servants, employees and attorneys who are engaged
22 in defendants' mail, telephone, facsimile or Internet order sales
23 business, secure from each such person a signed statement
24 acknowledging receipt of a copy of this Consent Decree and Business
25 Guide, and must, within ten (10) days of complying with this
26 paragraph, file an affidavit with the Associate Director, Division of

1 Enforcement, Bureau of Consumer Protection, Federal Trade Commission,
2 Washington, D.C. 20580, setting forth the fact and manner of their
3 compliance, including the name and title of each person to whom a
4 copy of the Consent Decree and Business Guide has been provided.

5 11. For a period of five (5) years from the date of entry of
6 this Consent Decree, the defendants must maintain and make available
7 to the Federal Trade Commission, within seven (7) days of the date of
8 receipt of a written request, business records demonstrating
9 compliance with the terms and provisions of this Consent Decree.

10 12. For a period of seven (7) years from the date of entry of
11 this Consent Decree, the corporate defendant, its successors and
12 assigns, must notify the Associate Director, Division of Enforcement,
13 Bureau of Consumer Protection, Federal Trade Commission, Washington,
14 D.C. 20580, at least thirty (30) days prior to any merger,
15 incorporation, dissolution, assignment, sale resulting in the
16 emergence of a successor corporation, creation or dissolution of a
17 subsidiary or parent, or any other changes in corporate status which
18 may affect defendant's obligations under this Consent Decree.
19 *Provided, however,* with respect to any proposed change in the
20 corporation about which defendant learns less than thirty (30) days
21 prior to the date such action is to take place, defendant must notify
22 the Commission's Associate Director for Enforcement as soon as
23 practicable after obtaining such knowledge.

24 13. For a period of five (5) years from the date of entry of
25 this Consent Decree, the individual defendant must notify the
26 Commission's Associate Director for Enforcement within thirty (30)

1 days of any change in his or her affiliation with, or change in his
2 or her active participation in the management or direction of, any
3 business which is engaged in the sale or distribution of merchandise
4 covered by the Rule. *Provided, however,* with respect to any change
5 in his affiliation or participation, as aforesaid, about which
6 defendant learns less than thirty (30) days prior to the date such
7 action is to take place, defendant must notify the Commission's
8 Associate Director for Enforcement as soon as practicable after
9 obtaining such knowledge.

10 14. One hundred twenty (120) days after entry of this Consent
11 Decree, defendants must provide a written report to the Federal Trade
12 Commission, sworn to under penalty of perjury, setting forth in
13 detail the manner and form in which defendants have complied and are
14 complying with this Consent Decree. This report must include and is
15 not limited to:

- 16 a. a specimen copy of each delay option notice used for
17 purposes of complying with any provision of the Rule, and
18 a statement setting forth in detail the procedures in
19 place and method for providing such notices to consumers
20 in a timely fashion;
- 21 b. a specimen copy of each advertisement, telemarketing or
22 telephone script that contains a shipping or delivery
23 representation, and all procedures for making a shipping
24 or delivery representation to the buyer;

- 1 c. a statement setting forth in detail defendants' procedures
2 for providing prompt refunds to buyers pursuant to the
3 Rule;
- 4 d. a statement setting forth in detail defendants' use (if
5 any) of cancellation or restocking fees, a list of names
6 and addresses of consumers assessed any cancellation or
7 restocking fees by the company, and the reasons for
8 assessing the fees;
- 9 e. a statement setting forth in detail the basis for claiming
10 that defendants will ship merchandise:
- 11 i. within the time stated in any advertisement or
12 representation to the buyer before or at the time of
13 sale;
- 14 ii. within thirty (30) days, where no time is stated
15 clearly and conspicuously in any advertisement or is
16 made to the buyer before or at the time of sale; and
- 17 f. a statement setting forth in detail the manner and form in
18 which defendants have satisfied all redress obligations
19 required by this Consent Decree, including, but not
20 limited to, a copy of the list compiled pursuant to
21 Paragraph 7 of this Consent Decree, and the amount of
22 redress paid to each consumer on this list.

23 Defendants must mail this written report to the Associate Director
24 for Enforcement, Bureau of Consumer Protection, Federal Trade
25 Commission, Washington, D.C. 20580.

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1 15. Defendants are hereby required, in accordance with 31
2 U.S.C. § 7701, to furnish to the Federal Trade Commission their
3 taxpayer identifying numbers (employer identification and Social
4 Security numbers), which will be used for purposes of collecting and
5 reporting on any delinquent amount arising out of their relationship
6 with the government.

7 **CONTINUING JURISDICTION**

8 16. This Court will retain jurisdiction of this matter for the
9 purposes of enabling any of the parties to this Consent Decree to
10 apply to the Court at any time for such further orders or directives
11 as may be necessary or appropriate for the interpretation or
12 modification of this Consent Decree, for the enforcement of
13 compliance therewith, or for the punishment of violations thereof.

1 JUDGMENT IS THEREFORE ENTERED in favor of plaintiff and against
2 defendants, pursuant to all the terms and conditions recited above.

3 Dated this _____ day of _____, 2002.

4
5 _____
6 UNITED STATES DISTRICT JUDGE

7
8 The parties hereby consent to the terms and conditions of the
9 Consent Decree as set forth above and consent to the entry thereof.
10 Defendants waive any rights that may arise under the Equal Access to
11 Justice Act, 28 U.S.C. § 2412, concerning the investigation and
12 prosecution of this action.

13
14 FOR THE UNITED STATES OF AMERICA:

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26 EUGENE M. THIROLF
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2 FOR THE FEDERAL TRADE COMMISSION:
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5 ELAINE D. KOLISH
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1 FOR THE DEFENDANTS:
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4 _____
GARY JERJERIAN
Individually
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6 DYNAMIC WHEELS & TIRES, INC.
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8 By: _____
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